



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350 and 355

[EPA-HQ-SFUND-1988-0002, EPA-HQ-SFUND-1998-0002; FRL-10012-00-OLEM]

Emergency Planning and Community Right-to-Know Regulations: Trade Secrecy Claims and Emergency Planning Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is issuing a technical amendment to update the program websites for trade secrecy regulations. This action amends the regulations to remove the outdated substantiation form for trade secrecy claims from the Code of Federal Regulations. The most current substantiation form is posted on EPA program websites. The Agency is also including clarification within a note in the regulations for state coordination of emergency response.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established two dockets for this action under Docket ID No. EPA-HQ-SFUND-1988-0002 and EPA-HQ-SFUND-1998-0002. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mark Douglas, U.S. Environmental

Protection Agency, Office of Emergency Management, (MC: 5104A), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; 202-564-5572; douglas.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Entities that may be affected by this action are those facilities subject to sections 302, 303, 304, 311, 312, 313, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act (EPCRA), specifically, entities that file trade secrecy claims for chemical identity and/or report emergency release notifications under the aforementioned sections.

II. What Does This Correction Do?

This technical amendment is being issued to correct the program website for the EPCRA Trade Secrecy Claims in 40 CFR 350.7, 350.16, and 350.27. EPA published an amendment in the Federal Register on November 14, 2003 (68 FR 64719) similarly correcting program websites. That document also discusses the intent of removing the Trade Secret substantiation form (OMB control number 2050-0078) and instructions from 40 CFR 350.27 and directing the public to the program websites to access the current version. Furthermore, the form requires Office of Management and Budget approval every three years, but § 350.27 still reflects a form that expired in 1990. The 2003 amendment inadvertently omitted the instructions to update CFR part 350 to remove the form. This technical amendment is being issued to amend the final rule by revising § 350.27 to direct the public to the current version of the form and instructions on the program websites.

This technical amendment is also being issued to revise a note in 40 CFR 355.41 to denote potential SERC specific formats in the reporting requirements. On November 3, 2008, EPA published an amendment in the Federal Register (73 FR 65452) updating 40 CFR part 355.

This action further clarifies a note at § 355.41.

III. Rulemaking Procedures and Findings of Good Cause

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because such notice and opportunity for comment is unnecessary for the following two reasons. First, this action is merely correcting the regulatory text to reflect the removal of a form, where such removal was intended in a previously published final rule that went through notice and public comment procedures, but in which EPA inadvertently neglected to include the necessary amendatory instruction to revise the regulatory text. Second, this action is a minor, non-substantive technical correction since it involves removal of a duplicative and outdated form. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Effective Date

Section 553(d)(3) of the APA, 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the Federal Register “except . . . as otherwise provided by the agency for good cause” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which

require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” Gavrilovic, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because it merely removes an old Trade Secret substantiation form and directs the public to the program websites to access the most current version. For this reason, the agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication.

V. Do Any of the Statutory and Executive Order Reviews Apply to This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to the Office of Management and Budget (OMB) review. Additionally, this action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or Sections 202 and 205 of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section III of the preamble, including the basis for that finding.

List of Subjects in 40 CFR Part 350

Environmental protection, Confidential business information, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 355

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 7, 2020..

Peter Wright,
Assistant Administrator,
Office of Land and Emergency Management.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 350 - TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET
DISCLOSURES TO HEALTH PROFESSIONALS**

1. The authority citation for Part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048 Pub. L. 99-499, 100 Stat. 1747

2. Amend § 350.7 by revising paragraphs (a) introductory text, (b), (c) and (d)(2) to read as follows:

§ 350.7 Substantiating claims of trade secrecy.

(a) Claims of trade secrecy must be substantiated by providing a specific answer including, where applicable, specific facts, to each of the following questions with submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled “Substantiation to Accompany Claims of Trade Secrecy.” The form and instructions are posted on the EPA program websites, <http://www.epa.gov/epcra> and <http://www.epa.gov/tri/rfi>.

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(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be submitted on the form entitled “Substantiation to Accompany Claims of Trade Secrecy” and included with a submitter’s trade secret claim. The form is posted on the EPA program websites, <http://www.epa.gov/epcra> and <http://www.epa.gov/tri/rfi>,

(c) An owner, operator, or senior official with management responsibility shall sign the certification at the end of the form entitled “Substantiation to Accompany Claims of Trade Secrecy,” which is posted on the EPA program websites, <http://www.epa.gov/epcra> and

<http://www.epa.gov/tri/rfi>. The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

(d) * * *

(2) An owner, operator, or senior official with management responsibility shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form found on EPA program websites, <http://www.epa.gov/epcra> and <http://www.epa.gov/tri/rfi>, with the certification described in paragraph (c) of this section.

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3. Revise § 350.16 to read as follows:

§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.

The address and location to send all claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III and all public petitions requesting disclosure of chemical identities claimed as trade secret are posted on the following EPA program websites, <http://www.epa.gov/epcra> and <http://www.epa.gov/tri/rfi>. Any subsequent changes to the address and location will be announced in Federal Register Notices as these changes occur. Also, the changes will be posted on these websites. Submitters may also contact the EPCRA, RMP & Oil Information Center at (800) 424-9346 or (703) 348-5070, <https://www.epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra> to obtain this information.

4. Amend § 350.27 by revising paragraph (a) and removing and reserving paragraph (b), including the form and instructions to the form, to read as follows:

§ 350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

(a) The substantiation form to accompany claims of trade secrecy must be completed and submitted as required in § 350.7(a). The form and instructions are posted on the Emergency Planning and Community Right-to-Know Act (EPCRA) website, <http://www.epa.gov/epcra> and the Toxics Release Inventory Program Division website, <http://www.epa.gov/tri/rfi>. Submitters may also contact the National Service Center for Environmental Publications (NSCEP) at (800) 490-9198 or <https://www.epa.gov/nscep> to obtain the form. The address to send all trade secrecy claims is posted on the following EPA Program websites, <http://www.epa.gov/epcra> and <http://www.epa.gov/tri/rfi>. This information can also be obtained by contacting the EPCRA, RMP & Oil Information Center at (800) 424-9346 or (703) 348-5070, or <https://www.epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra>.

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PART 355 – EMERGENCY PLANNING AND NOTIFICATION

5. The authority citation for Part 355 continues to read as follows:

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

7. Amend the Note to § 355.41 to read as follows:

§ 355.41 In what format should the information be submitted?

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Note 1 to § 355.41: The SERC and LEPC may request a specific format for this

information.

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